## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA SOUTHERN DIVISION No. 7:18-CV-154-BO

BENJAMIN KINSER,	)		
Plaintiff,	)	s	
v.	)		ORDER
SALT BAR, LLC, et al.,	)		
Defendants.	) .		

This cause comes before the Court on plaintiff's motion for entry of default [DE 38]. For the following reasons, plaintiff's motion [DE 38] is DENIED.

The complaint in this action was filed in the District of South Carolina on July 2, 2018. [DE 1]. That same month, plaintiff was given permission to proceed *in forma pauperis* under 28 U.S.C. § 1915. [DE 9]. The case was transferred to the Eastern District of North Carolina on August 22, 2018. [DE 18]. In January 2019, the Court entered default against defendants Sean Carey and Salt Bar, LLC. [DE 36, 37]. In February 2019, plaintiff moved for entry of default against defendants James Kupra and Derek Gonzalez. While his motion is titled a motion for "entry of default judgment," the Court construes it as a motion for entry of default under Federal Rule of Civil Procedure 55(a).

"When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by [the Federal Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise, the Clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Here, however, defendants Kupra and Gonzalez were not properly served, as the summonses sent to them were returned as undeliverable. [DE 28, 29, 39, 40]. As such, neither Mr. Kupra nor Mr.

Gonzalez has failed to timely defend. Because entry of default would therefore be inappropriate, plaintiff's motion [DE 38] is DENIED.

SO ORDERED, this  $\boxed{18}$  day of March, 2019.

TERRENCE W. BOYLE

CHIEF UNITED STATES DISTRICT JUDGE